

## HR Weekly Podcast

8/8/2007

Today is August 8, 2007, and welcome to the HR Weekly Podcast from the State Office of Human Resources. Given the increased duty assignments of military service men and women, this week's topic is the reemployment rights of an employee absent from work for military duty beyond five years.

The Uniformed Services Employment and Reemployment Rights Act or USERRA protects civilian job rights and benefits for veterans and members of Reserve components. USERRA establishes the cumulative length of time that an individual may be absent from work for military duty and retain reemployment rights up to five years.

There are, however, eight categories of service that are exempt from the five-year limit. These include:

- 1) Service required beyond five years to complete an initial period of obligated service. Some military specialties require initial active service obligations beyond five years. An example of this type of service would be the Navy's nuclear power program.
- 2) Service from which a person, through no fault of the person, is unable to obtain a release within the five-year limit. For example, the five-year limit will not be applied to members of the Navy or Marine Corps whose obligated service dates expire while they are at sea. The five-year limit also will not apply when service members are involuntarily retained on active duty beyond the expiration of their obligated service date. Some persons who served in Operations Desert Shield and Storm had this experience.
- 3) Required training for reservists and National Guard members. The two-week annual training sessions and monthly weekend drills mandated by statute for reservists and National Guard members are exempt from the five-year limitation. Additional training requirements certified in writing by the Secretary of the concerned military service to be necessary for individual professional development are also excluded.
- 4) Service under an involuntary order to, or to be retained on, active duty during domestic emergency or national security related situations. Persons involuntarily ordered to active duty for operational missions are also included in this exemption. The U.S. military involvement in Afghanistan and Iraq are two examples of such an operational mission.
- 5) Service under an order to, or to remain on, active duty because of a war or national emergency declared by the President or Congress. This category includes service not only by persons involuntarily ordered to active duty, but also service by volunteers who receive orders to active duty.
- 6) Active duty by volunteers supporting "operational missions" for which selected reservists have been ordered to active duty without their consent. The U.S. military involvement in Afghanistan and Iraq are again examples of such an operational mission. This exemption covers persons who are called to active duty after volunteering to support operational missions.
- 7) Service by volunteers who are ordered to active duty in support of a "critical mission or requirement" in times other than war or national emergency and when no involuntary call up is in effect. The Secretaries of the various military branches each have authority to designate a military operation as a critical mission or requirement.
- 8) Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.

USERRA also provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability. Service members convalescing from injuries received during service or training may have up to two years from the date of completion of service to return to their jobs or apply for reemployment.

A person, whose military service lasted 91 days or more, must be promptly reemployed in the job the person would have held had the person remained continuously employed, or a position of equivalent seniority, status, and pay so long as the person is qualified for the job, or can become qualified after reasonable efforts by the employer to qualify the person. The law clearly provides for alternative reemployment positions if the service member cannot qualify for the position.

If you have any questions regarding USERRA , please contact your HR consultant at 737-0900 or the Veterans' Employment and Training Service.

Thank you.